UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHARLES LAVEL STRINGER,	)	
	)	**PA**
Petitioner,	)	
	)	
v.	)	Docket No. 16282-12 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

This matter is before the Court on respondent's motion for summary judgment pursuant to Rule 121, filed March 5, 2013.[1] On March 6, 2013, petitioner filed his response in opposition to this motion.

Background

Petitioner filed a Federal income tax return and amended return for his 2007 tax year. Petitioner's amended return reported a balance due, which the IRS assessed on a date not reflected in the record.

On November 3, 2011, respondent issued to petitioner a Notice of Intent to Levy with respect to his 2007 tax year. On November 15, 2011, respondent received petitioner's Form 12153, Request for a Collection Due Process or Equivalent Hearing. In his Form 12153, petitioner indicated that he desired an Appeals Office hearing for a filed notice of Federal tax lien with respect to his 2008 and 2009 tax years. On page 2 of his Form 12153, he also indicated that he had sufficient tax deductions and tax credits from his 2008 and 2009 tax years to offset any tax liability owed in 2007. He attached to the form a typed letter that stated, among other things, that "I believe I don't owe the money to y'all because I filed tax returns for those years." Petitioner stated that he was involved in a

[1] All Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect at all relevant times.

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lawsuit with the Texas Attorney General's Office to recover funds they took from him and that he was interested in pursuing an offer-in-compromise.[2]

On or about April 3, 2012, respondent's Settlement Officer J. Lee (SO Lee) sent to petitioner a letter acknowledging receipt of his Form 12153, requesting from petitioner a signed and completed Form 656, Offer in Compromise, supporting documentation, all applicable fees, and signed copies of his 2010 and 2011 Federal income tax returns. SO Lee requested that petitioner submit all these forms, documents, and fees by April 25, 2012.

On May 29, 2012, SO Lee conducted petitioner's Appeals Office hearing by telephone. In her case activity record, which respondent has submitted with this motion for summary judgment, SO Lee recorded that petitioner did not dispute owing the money to the IRS; that he indicated that he had filed a lawsuit in Texas and that he desired to use the eventual hoped-for proceeds to satisfy his tax liabilities; and that he had not provided a signed Form 656, supporting documentation, and required fees as requested.

On May 31, 2012, respondent issued to petitioner a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330. In sustaining the proposed levy, respondent's Appeals Office determined that petitioner did not dispute his underlying 2007 tax liability during the Appeals Office hearing and that a collection alternative was not possible because petitioner had failed to submit a Form 656, supporting documentation, and all applicable fees during his hearing.

On June 25, 2012, petitioner filed a petition with this Court seeking review of respondent's determinations. In his petition, he alleged that certain deductions and credits he claimed in 2008, 2009, and 2010 were sufficient to cover any amounts owed.

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[2]Attached to petitioner's Form 12153 was a Department of the Treasury Financial Management Service's letter, dated April 11, 2008, that informed petitioner that the agency had intercepted and remitted $7,644 of petitioner's Federal payments to the Texas Attorney General's Office for the stated purpose of child support.

Analysis

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). This Court may grant summary judgment if there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988). The moving party bears the burden of proving that there is no genuine dispute as to any material fact, and factual inferences are read in a manner most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982). When a motion for summary judgment is made and properly supported, the adverse party may not rest upon mere allegations or denials of the pleadings but must set forth specific facts showing that there is a genuine dispute for trial. Rule 121(d). If the adverse party does not so respond, then a decision may be entered against such party. Id.

Section 6330 generally provides that the Commissioner may not proceed with collection by levy on a taxpayer's property until the taxpayer has been given notice of and the opportunity for an Appeals Office hearing and, if dissatisfied, with judicial review of the administrative determination. See Davis v. Commissioner, 115 T.C. 35, 37 (2000); Goza v. Commissioner, 114 T.C. 176, 179 (2000).

Section 6330(c)(1) imposes on the Appeals Office an obligation to verify that the requirements of any applicable law or administrative procedure have been met. Section 6330(c)(2) prescribes the matters that a person may raise at his or her Appeals Office hearing, including offers of collection alternatives. Section 6330(c)(2)(B) provides that the existence and amount of the underlying tax liability can be contested at an Appeals Office hearing if the person did not receive a notice of deficiency for the tax in question or did not otherwise have an earlier opportunity to dispute the tax liability. See Magana v. Commissioner, 118 T.C. 488, 492 (2002); Sego v. Commissioner, 114 T.C. 604, 609 (2000); Goza v. Commissioner, 114 T.C. at 180-181. Our review of the settlement officer's determination is limited to issues that the taxpayer raised at the Appeals Office hearing. See Giamelli v. Commissioner, 129 T.C. 107, 115 (2007); sec. 301.6320-1(f)(2), Q&A-F3, Proced. & Admin. Regs.

If the validity of the underlying tax liability is properly at issue in a collection review proceeding, this Court reviews the matter on a de novo basis.

Goza v. Commissioner, 114 T.C. at 181-182. We review other matters under an abuse of discretion standard. See id.

In his motion for summary judgment, respondent contends that petitioner's 2007 tax liability is not at issue in this proceeding, asserting that petitioner conceded during his May 29, 2012, hearing that he owed the 2007 tax liabilities assessed against him. In his opposition to respondent's motion for summary judgment, petitioner has not set forth specific facts to show that there is a genuine dispute for trial in this regard. See Rule 121(d). Having failed to challenge his underlying liability in his Appeals hearing, he is not entitled to challenge it in this proceeding. See Giamelli v. Commissioner, 129 T.C. at 113; see also Perkins v. Commissioner, T.C. Memo. 2008-103. In any event, petitioner has raised no plausible challenge to his 2007 liability in this proceeding.[3]

Respondent's notice of determination determined that no collection alternative was possible because petitioner failed to submit a Form 656, supporting documentation, and all applicable fees. The record does not indicate that petitioner ever offered a proper collection alternative in the Appeals hearing and petitioner has failed to show that there is any genuine dispute of fact in this regard. SO Lee did not abuse her discretion by not considering collection alternatives that petitioner never made. See Vines v. Commissioner, T.C. Memo. 2009-267, aff'd, 418 Fed. Appx. 900 (11th Cir. 2011). Moreover, the record indicates, and petitioner has not disputed, that he failed to submit financial information requested of him. Particularly in that light, SO Lee's refusal to consider petitioner's suggestion to delay the proposed levy for an indeterminable amount of time until

[3]In his petition petitioner asserts vaguely that his 2007 tax liability should have been reduced on account of tax deductions and credits he had in his 2008, 2009, and 2010 tax years. But contrary to Rule 331(b)(4) and (5), the petition does not contain a clear assignment of error in this regard and does not adequately state the facts on which petitioner bases any such assignment of error. In particular, even if we were to assume for the sake of argument that petitioner was entitled to claim deductions and credits for years after 2007 (an issue not properly before us in this proceeding), petitioner has not articulated, and we are not aware of, any legal basis for asserting that such alleged tax benefits for later years would affect his tax liability for 2007.

his pending lawsuit was resolved and settled was not an abuse of discretion.[4] See Holloway v. Commissioner, 322 Fed. Appx. 421, 423 (6th Cir. 2008), aff'g T.C. Memo. 2007-175.

In his opposition to respondent's motion for summary judgment and unsworn declaration under penalty of perjury, petitioner suggests that the merits of his pending lawsuit against the Texas Attorney General's Office creates a genuine dispute as to a material fact, warranting denial of respondent's motion for summary judgment. Particularly in the light of petitioner's failure to respond to respondent's requests for financial information and supporting documentation, the existence or outcome of the alleged pending lawsuit is not germane to the determination to sustain the proposed levy. Consequently, we conclude that there is no genuine dispute of fact in this regard that requires a trial.

In his unsworn declaration under penalty of perjury, petitioner asserts that an evidentiary hearing is necessary to take testimony from petitioner and from SO Lee, because, petitioner asserts, SO Lee told him that if he filed his 2010 return she would forgive petitioner's 2007 taxes that are in dispute.[5] The administrative record indicates that SO Lee informed petitioner that he would need to submit, among other things, his 2010 return before any collection alternative could be considered. But even if we were to assume, for the sake of argument, that SO Lee made the statement that petitioner attributes to her, implausible as that might be, the result in this case would not change because, if for no other reason, the record indicates that petitioner never filed his 2010 return before respondent issued the

[4]To the extent petitioner's actions could be construed as requesting currently not collectible status until the pending lawsuit was resolved, respondent did not abuse his discretion in sustaining the proposed levy because petitioner failed to submit the necessary financial information to make that determination. See Wright v. Commissioner, T.C. Memo. 2012-24, at *3.

[5]On February 28, 2013, petitioner filed a motion for writ of habeas corpus ad testificandum, apparently seeking to compel the testimony of SO Lee. As explained in respondent's response filed March 14, 2013, a writ of habeas corpus is an improper method for petitioner to attempt to produce a witness. But because we are granting respondent's motion for summary judgment, this issue is moot.

notice of determination, and petitioner has failed to set forth facts showing that there is a genuine dispute for trial in this regard.[6]

In sum, petitioner has failed to put before us grounds on which we could find that the Appeals Office erred in its determinations. In the absence of a valid issue for review and on the basis of our review of the record, we conclude that there is no genuine dispute as to a material fact and that respondent is entitled to judgment as a matter of law.

Accordingly, for the reasons stated, it is

ORDERED: That this case is stricken for trial from the May 6, 2013, Jackson, Mississippi, trial session. It is further

ORDERED: That respondent's motion for summary judgment, filed March 5, 2013, is granted. It is further

ORDERED: That petitioner's motion for writ of habeas corpus ad testificandum, filed February 28, 2013, is denied. It is further

ORDERED AND DECIDED: That respondent may proceed with the collection action as determined in the Notice of Determination Concerning Collection Action Under Section 6320 and/or 6330 for tax year 2007, upon which this case is based.

(Signed) Michael B. Thornton
Judge

ENTERED: **MAR 26 2013**

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[6]We note that petitioner attached to his response to respondent's motion for summary judgment a document that petitioner asserts is his 2010 Federal income tax return. There is no indication, however, that this document was ever filed with or accepted by the IRS as petitioner's 2010 Federal income tax return. We further note that this document is dated June 11, 2012, which is after the date of the notice of determination.